

**NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT
AND MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE
RULES. See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24.**

FILED BY CLERK

OCT 15 2008

COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

PAMELA V.,

Appellant,

v.

ARIZONA DEPARTMENT OF
ECONOMIC SECURITY and
TRINITY M.,

Appellees.

2 CA-JV 2008-0044

DEPARTMENT A

MEMORANDUM DECISION

Not for Publication

Rule 28, Rules of Civil

Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 17301800

Honorable Jane L. Eikleberry, Judge

AFFIRMED

Doris Reed

Tucson
Attorney for Appellant

Terry Goddard, Arizona Attorney General
By Claudia Acosta Collings

Tucson
Attorneys for Appellee Arizona
Department of Economic Security

P E L A N D E R, Chief Judge.

¶1 Pamela V. appeals from the juvenile court’s April 2008 order terminating her parental rights to her three-year-old daughter, Trinity M. As grounds for termination, the court found Pamela had neglected or abused the child, *see* A.R.S. § 8-533(B)(2); had substantially neglected or willfully refused to remedy the circumstances that prevented Trinity’s return to her custody after Trinity had spent more than nineteen months in court-ordered foster care, *see* § 8-533(B)(8)(a); and in any event, had failed to remedy those circumstances and was unlikely to be able to effectively parent Trinity in the near future, *see* § 8-533(B)(8)(b). Pamela contends the evidence was insufficient, by a clear and convincing evidence standard, to establish grounds for termination.

¶2 Specifically, Pamela maintains the Arizona Department of Economic Security (ADES) was required to establish Trinity suffered from “‘serious harm[,]’ whether physical, mental, or moral” in order to prove neglect, and that it failed to do so. She also argues ADES failed to prove she substantially neglected or willfully refused to remedy the cause of Trinity’s continued removal, *see* § 8-533(B)(8)(a), or that she would be unlikely to be able to parent Trinity in the near future, § 8-533(B)(8)(b). Finally, she argues ADES failed to present clear and convincing evidence that it had “made a diligent effort to provide appropriate reunification services,” as required by § 8-533(B)(8). We affirm.

¶3 “We will not disturb the juvenile court’s order severing parental rights unless its factual findings are clearly erroneous, that is, unless there is no reasonable evidence to support them,” *Audra T. v. Ariz. Dep’t of Econ. Sec.*, 194 Ariz. 376, ¶ 2, 982 P.2d 1290, 1291

(App. 1998), and we view the evidence in the light most favorable to affirming those findings, *Vanessa H. v. Ariz. Dep't of Econ. Sec.*, 215 Ariz. 252, ¶ 20, 159 P.3d 562, 566 (App. 2007).

¶4 Evidence in the record supported the juvenile court's findings that eighteen-month-old Trinity was removed from her parents' home in September 2006

because both parents¹ and [her] father's brother who lived with them were using methamphetamine . . . in front of [her]. The home was unsafe for a child. The home was filthy and cluttered with numerous choke hazards on the floor. There was cat feces on the floor, on one of [Trinity's] stuffed animals and on one of her shoes. There was little food available for [Trinity].²

The court noted that shortly after her removal, Trinity had been “diagnosed with Neglect of Child and was found to have delayed language and difficulty sleeping.”

¶5 Pamela's prior history of neglecting her other children was also relevant to the juvenile court's finding pursuant to § 8-533(B)(2). *See Linda V. v. Ariz. Dep't of Econ. Sec.*, 211 Ariz. 76, ¶ 14, 117 P.3d 795, 798 (App. 2005) (under § 8-533(B)(2), parental rights to all children may be terminated based on neglect of any one of parent's children). The court described Pamela's “history of child neglect, abandonment and unstable living situations” as follows:

¹The juvenile court also terminated the parental rights of Trinity's father, Danny M. His appeal of that decision was dismissed pursuant to Rule 106(G), Ariz. R. P. Juv. Ct.

²Trinity was adjudicated dependent in October 2006, after her parents failed to appear for a settlement conference. *See* Ariz. R. P. Juv. Ct. 53(D)(2).

She has seven other children, but has not parented any of her children past the age of eight years old. California C.P.S. had received multiple reports regarding these other children [when Pamela lived in that state]. Substantiated reports included physical abuse by the children's father, sexual abuse by the mother's boyfriend, general neglect by the mother, and caretaker absence/incapacity by the mother. Her rights to three of those children were terminated. The three children were subsequently adopted. She lost custody of her other four children.³

¶6 Relying on *In re Pima County Juvenile Action No. S-111*, 25 Ariz. App. 380, 390, 543 P.2d 809, 819 (1975), Pamela contends the juvenile court erred in terminating her parental rights pursuant to § 8-533(B)(2) because ADES failed to establish her neglect had caused “serious harm” to Trinity, “be it physical, mental, or moral.” She argues the court erred in considering an “initial diagnosis” that Tiffany suffered developmental delays. But we have held that this “serious harm” standard has been superseded by A.R.S. § 8-201(21), which currently “defines ‘neglect’ or ‘neglected’ to mean ‘the inability or unwillingness of a parent . . . of a child to provide that child with supervision, food, clothing, shelter or medical care if that inability or unwillingness causes substantial risk of harm to the child’s health or welfare’” *Lashonda M. v. Ariz. Dep’t of Econ. Sec.*, 210 Ariz. 77, ¶ 10, 107 P.3d 923, 927 (App. 2005) (alteration in *Lashonda*), quoting § 8-201(21).

¶7 Reasonable evidence, including evidence of the conditions Child Protective Services (CPS) workers found when they first removed Trinity from Pamela’s home on

³We note there appear to be some discrepancies in the evidence relating to the ages of the children in California. But any errors in this regard are immaterial.

September 10, 2006,⁴ supports the juvenile court’s finding that Pamela was unwilling or unable to provide Trinity with adequate food, proper supervision, or safe housing, causing a substantial risk of harm to Trinity. We disagree with Pamela that the court erred in considering the September 2006 evaluation of Tiffany as a neglected child who suffered from speech delays and sleeping difficulties. Findings made four months later, that Tiffany’s speech development was consistent with that of her peers, did not necessarily invalidate that initial assessment.

¶8 When a court’s finding must be supported by clear and convincing evidence, we will not disturb it ““unless we must say as a matter of law that no one could reasonably find the evidence to be clear and convincing.”” *Murillo v. Hernandez*, 79 Ariz. 1, 9, 281 P.2d 786, 791 (1955), *quoting Paulsen v. Coombs*, 253 P.2d 621, 624 (Utah 1953). The record in this case supports the juvenile court’s order terminating Pamela’s parental rights on the ground of neglect. *See* § 8-533(B)(2). Accordingly, we need not address Pamela’s arguments that the court abused its discretion in finding termination warranted pursuant to § 8-533(B)(8) because we find reasonable evidence in the record supports the court’s termination of her parental rights on the ground that she had “neglected . . . a child.” § 8-

⁴After a subsequent home visit showed improved conditions, and based on Pamela’s representation that she had not used methamphetamine for two years, Trinity was temporarily returned to the home on September 12, 2006, subject to involvement of the CPS in-home-services unit. Trinity was again removed on September 18, 2006, when laboratory analysis of a sample of Pamela’s hair established her regular use of methamphetamine in preceding months.

533(B)(2); *see Jesus M. v. Ariz. Dep't of Econ. Sec.*, 203 Ariz. 278, ¶ 3, 53 P.3d 203, 205 (App. 2002) (“If clear and convincing evidence supports any one of the statutory grounds on which the juvenile court ordered severance, we need not address claims pertaining to the other grounds.”). Therefore, we affirm the court’s order.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge